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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 71-305

EDWARD J. KAZUBOWSKI,

Petitioner,

vs.

HAROLD T. JOHNSON, as Sheriff of Henry County, Illinois,
LOY E. RAY, Sheriff of Henry County, Illinois,
WILLIAM J. SCOTT, Attorney General of the State of Illinois,
RICHARD B. OGILVIE, Governor of the State of Illinois,

Respondents.

On Motion for Leave to File Petition and Petition for a Writ of Habeas Corpus and for Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION FOR LEAVE TO FILE AMENDED PETITION FOR A WRIT OF HABEAS CORPUS AND AMENDED PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Edward J. Kazubowski, petitioner, respectfully moves this Court for leave to file the annexed amended petition for writ of habeas corpus under Section 2241 of Title 28 U.S.C. The amended petition for writ of habeas corpus is combined with and presented together with a petition for common law writ of certiorari under Section 1651(a) of Title 28 U.S.C. to review the orders of the Court of Appeals For the Seventh Circuit.

Your petitioner further represents to this Court the Motion For Leave to File Petition For a Writ of Habeas Corpus and for Certiorari to the United States Court of Appeals For the Seventh Circuit was docketed with the Clerk of this Court on August 30, 1971. That more than thirty (30) days have passed and none of the respondents have requested an extension of time within which to file a Brief in Opposition, to that portion for writ of certiorari, nor have the respondents, or any of them, filed a Brief in Opposition to the Motion and annexed Petition to that portion for writ of certiorari, heretofore docketed August 30, 1971.

No prejudice, harm, loss or damage can be sustained by respondents in the granting of this Motion.

The annexed petition includes "Questions Presented" as required by the Rules of this Court, and includes the jurisdictional issues raised in the Illinois Supreme Court and the reasons why those issues could not have been raised in the trial court, and the exceptional circumstances in this case, and sets forth the absence of available state corrective process and existence of circumstances rendering such process ineffective to protect the rights of petitioner.

The writ of habeas corpus is prayed for since petitioner is a licensed dentist and is presently confined in the common jail of Henry County, Cambridge, Illinois, illegally restrained by respondent, Loy E. Ray, for eight (8) months consecutive sentences to be served, and which sentences are presently being served, unless $28,000 is paid.

In addition to the illegal restraint, petitioner's practice of dentistry is in jeopardy, as is his means of livelihood, and petitioner is in need of medical treatment and surgery.

Petitioner prays for an expeditious consideration of his case.

28 U.S.C. § 2403 may be applicable.

/s/ EDWARD J. KAZUBOWSKI

Petitioner, Pro Se

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1. The suppression and concealment of the search warrant and complaint for search warrant by deliberate and intentional withholding from filing in any action against petitioner until after consecutive sentences were imposed upon petitioner, is contrary to, and in direct violation of the Criminal Code of Illinois, and violative of petitioner's right to due process of law secured to him, as a citizen, under the Fourteenth Amendment to the United States Constitution and deprived petitioner, as a citizen, of the rights, privileges and immunities secured to him by the Constitution and laws of the United States .. 18

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3. The searches, seizure, arrest and imprisonment of petitioner cannot be justified by the order entered July 2, 1970, summarily imposing consecutive sentences upon petitioner unless money paid to the "reliable informant" for whom the sheriff signed the complaint for search warrant, when the entire probable cause for the arrest and imprisonment of petitioner consists of the result of the seizure, arrest and imprisonment 21

4. The orders for alimony and attorney fees awarded to a divorced spouse and the "reliable informant" for whom the sheriff signed the complaint for search warrant, and service of 8 months consecutive sentences imposed upon petitioner unless $28,000 paid for his liberty, is an unjust, illegal and invidious discrimination as applied to petitioner, with intent to deny and deprive petitioner, as a citizen, and which sentences imposed, have deprived petitioner, as a citizen, of the equal protection of the laws secured by the Fourteenth Amendment to the United States Constitution 22

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In The

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Respondents.

AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND AMENDED PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To: *The Honorable Supreme Court Of The United States*:

Edward J. Kazubowski, petitioner, petitions the Supreme Court for a writ of habeas corpus pursuant to 28 U.S.C. Section 2241, and in combination therewith, also prays that a writ of common law certiorari issue to review the orders of the United States Court of Appeals for the Seventh Circuit, entered on August 18, 1971.

OPINIONS BELOW.

There was no written opinion by the Court of Appeals. On August 18, 1971, application for issuance of a certificate of probable cause on appeal from denial of a writ of habeas corpus was denied, and the appeal dismissed for lack of a certificate of probable cause on appeal. A copy of the order is appended hereto as Appendix A, infra, p. 1a.

A petition for writ of habeas corpus and for declaratory judgment was docketed and presented in the United States District Court for the Southern District of Illinois, Northern Division, on July 2, 1971, denied without hearing July 2, 1971, by an order dismissing petition and complaint with prejudice. A copy of the order is appended hereto as Appendix B, infra, pp. 2a-3a.

The opinion rendered by the Illinois Supreme Court on May 21, 1971, is reported in 48 Ill. 2d 413; 272 N.E. 2d 225. A copy of the opinion is appended hereto as Appendix C, infra, pp. 4a-8a.

The search warrant issued for the person of petitioner, at the address of the home of petitioner, on June 26, 1970 by Judge Dan H. McNeal, in the Circuit Court of Henry County, Illinois, served upon Petitioner June 26, 1970, is appended hereto as Appendix D, infra, pp. 9a.

A copy of the complaint for issuance of the search warrant is appended hereto as Appendix E, infra, pp. 10a-11a.

A copy of the attachment writ issued and served June 30, 1970, is appended hereto as Appendix F, infra, p. 12a.

A copy of the order entered July 2, 1970 in the Circuit Court of Henry County, Illinois, imposing consecutive sentences upon petitioner, is appended hereto as Appendix G, infra, pp. 13a-14a.

A copy of the order entered July 3, 1970 by the Illinois Supreme Court for the original writ of Habeas Corpus to issue, is appended hereto as Appendix H, infra, p. 15a.

A copy of the recognizance bond for release of petitioner July 3, 1970, reciting petitioner charged with the offense of a Direct Contempt of Court is appended hereto as Appendix I, infra, p. 16a.

A copy of the order entered by the Illinois Supreme Court October 6, 1970, refusing to quash or vacate the search warrant and denying petitioner complete discharge from custody of the sheriff, is appended hereto as Appendix J, infra, p. 17a.

A copy of the order of May 2, 1969, is appended hereto as Appendix K, infra, pp. 18a-19a.

Copies of the mittimi served upon petitioner June 29, 1971, imposing consecutive sentences unless $28,000 paid to the "reliable informant" and her attorneys, are appended hereto as Appendices L and M, infra, pp. 20a-22a.

JURISDICTION.

A) Habeas Corpus. The power of the Supreme Court to grant the Writ of Habeas Corpus is conferred by Title 28 U.S.C. Section 2241.

The order entered by the Court of Appeals denying a certificate of probable cause on appeal from denial of a writ of habeas corpus, and dismissing the appeal for lack of a certificate of probable cause was entered August 18, 1971.

This Amended Petition was filed within 90 days of that date.

Petition for writ of habeas corpus and for declaratory judgment was filed in the United States District Court for the Southern District of Illinois, Northern Division, July 2, 1971, denied without a hearing July 2, 1971. Certificate of probable cause denied July 13, 1971. Appeal to the United States Court of Appeals for the Seventh Circuit was filed in the District Court July 19, 1971.

Application for issuance of a certificate of probable cause was filed in the Court of Appeals on July 29, 1971, denied as stated above on August 18, 1971.

Jurisdiction in the District Court was invoked under Sections 2241 (a) (c) (3) (5), 2242, 2243, 2251 and 2254 of Title 28 U.S.C., Article VI, Clause 2 of the United States Constitution and Amendments 4, 5, 6, 8, 13 and Section 1 of Amendment 14 thereto.

Procedural grounds in the Circuit Court of Henry County, Illinois were unreasonable, arbitrary, seriously inadequate and intentionally frustrated, to forcibly prevent petitioner from defending against a groundless and fictitious search warrant issued for the person of petitioner, at the address of petitioner's home, by deliberate suppression and concealment of the search warrant, and complaint upon which the search warrant issued, until after the consecutive sentences were imposed upon petitioner. Suppression of the lack of evidence to impose any sentence upon petitioner was deliberate.

On June 26, 1970, a search warrant was issued in the Circuit Court of Henry County, Illinois, by Judge Dan H. McNeal, upon a complaint signed by the Sheriff of Henry County, Illinois, for the person of petitioner, at the address of petitioner's home, but without a charge of an offense committed.

On June 26, 1970, upon a breaking and entering into the home of petitioner by the Sheriff, deputy sheriffs and City Police officers, petitioner was served with a copy of the search warrant for his person. There was a search of the premises, a search, arrest and handcuffing of petitioner, with a refusal to inform petitioner of the offense committed.

Petitioner was taken to the County Jail, the handcuffs removed, and petitioner imprisoned. No hearing was afforded to petitioner.

The search warrant was not filed in any criminal action against petitioner; there was no complaint for search warrant against petitioner on file in the Circuit Court of Henry County, Illinois.

Petitioner, forcibly restrained of his liberty by a groundless and fictitious search warrant, and forcibly prevented from defending against the fictitious search warrant, by deliberate suppression and deliberate omission to file a criminal action against petitioner, application for original writ of habeas corpuse was made to Justice Thomas E. Kluczynski, of the Illinois Supreme Court on June 29, 1970. The petition for writ of habeas corpus had attached thereto a copy of the search warrant served upon petitioner. Original jurisdiction of the Supreme Court in habeas corpus proceedings is conferred by Article VI, section 5 of the Illinois Constitution of 1870.

No action was taken by the Justice on the petition for habeas corpus, affording time for the trial court to issue a charge of an offense against petitioner.

The following day, June 30, 1970, an attachment writ was issued in the Circuit Court of Henry County, Illinois. A copy of the writ was left between the bars of the cell

door for petitioner by the Sheriff, reciting a contempt of court against the State of Illinois.

On July 2, 1970, without notice to attorney for petitioner, and after 7 days continuous restraint of petitioner's liberty, petitioner was taken into the Circuit Court of Henry County, Illinois, and summarily held in contempt of court for "wilful and contumacious" refusal to pay a divorced spouse alimony and attorney fees, in a closed divorce action in said Circuit Court, Case No. 65-D-1240. Petitioner was sentenced to 60 days commitment, to be served consecutively after "the other orders of contempt now in force in this cause", and which "other orders of contempt" were not made known to petitioner.

Upon the entry of the Order of July 2, 1970, the search warrant and complaint for search warrant were then filed in the closed divorce action, Case No. 65-D-1240 in said Circuit Court, shown filed as of July 1, 1970. The complaint for search warrant, signed by the Sheriff, was supported by: "A Reliable Informant, Betty Dolar Kazubowski".

By a prior order entered April 28, 1969 in Case No. 65-D-1240, the Clerk of the Circuit Court of Henry County, Illinois was enjoined from filing any documents, papers or pleadings of petitioner, unless pertaining to appeals.

Case No. 65-D-1240 in said Circuit Court was a divorce action, commenced November 23, 1965, by Betty Dolar Kazubowski against petitioner, entitled: "Betty Dolar Kazubowski v. Edward J. Kazubowski". A final decree of divorce was awarded the "reliable informant", Betty Dolar Kazubowski, on June 13, 1966, and filed in said cause. A separate and supplementary property decree was thereafter entered on August 31, 1966 and filed in said cause. The property decree was prepared by attorney

for Betty Dolar Kazubowski and provided for $5,000 in lieu of and in full satisfaction of all rights to alimony, and that Betty Dolar Kazubowski was permanently barred from any and all additional rights to alimony, that each party pay their own attorney fees and their own obligations from date of November 20, 1965, and provided for a waiver of dower and homestead and of every other kind of interest in the property of the other.

On July 3, 1970, a second and supplementary petition for original writ of habeas corpus was filed and presented to Justice Kluczynski of the Illinois Supreme Court and the writ of habeas corpus was ordered to issue, and petitioner to be released upon giving personal recognizance bond, and respondent sheriff ordered to file a return.

The personal recognizance bond in the sum of $5,000 charged petitioner with "the offense of Direct Contempt of Court".

The Return Upon Writ of Habeas Corpus by the Sheriff did not deny any of the allegations of petitioner, nor certify to the true cause of the breaking and entering, the searches, arrest and imprisonment June 26, 1970, but attached to the Return opinions rendered in *Kazubowski* v. *Kazubowski,* 93 Ill. App. 2d 126 and *Kazubowski* v. *Kazubowski,* 45 Ill. 2d 405, and attached three mittimi, falsely reciting service upon petitioner.

On October 6, 1970, the Illinois Supreme Court entered an order refusing to quash or vacate the search warrant, and denied petitioner a complete discharge from custody of the sheriff.

On May 21, 1971, an opinion was rendered by the Illinois Supreme Court; the Writ quashed and petitioner remanded to the custody of the Sheriff to serve the sentence of the Court.

On June 29, 1971, the Clerk of the Circuit Court of Henry County, Illinois, issued two mittimi, for 8 months consecutive sentences, unless $28,000 paid to the "reliable informant" and divorced spouse. Petitioner was taken into custody from his dental office June 29, 1971 and imprisoned, and remains imprisoned, in violation of the Constitution and laws of the United States.

The State declined and refused to rule upon the claims of violation of petitioner's Federal Constitutional rights, more particularly the Fourth, Fifth, Sixth and Fourteenth Amendment rights, and rejected petitioner's claims of deprivations of rights, privileges or immunities secured to him, as a citizen, by the Constitution and laws of the United States.

Petitioner is imprisoned and unlawfully restrained and confined of his liberty upon arrest and imprisonment by virtue of a groundless and fictitious search warrant, to obtain a conviction for direct contempt of court, imposing consecutive sentences for 8 months imprisonment, unless $28,000 paid to the divorced spouse and "reliable informant" for whom the sheriff signed the complaint for search warrant, in violation of the Constitution and laws of the United States.

The conduct of petitioner for the charge of an offense for direct contempt of court has not been disclosed or answered by the State.

The State deliberately suppressed the lack of evidence upon which to convict petitioner, and deliberately suppressed the loss of jurisdiction of the trial court in the divorce proceedings, to coerce illegal payments of money under the guise of alimony and attorney fees to a divorced spouse and "reliable informant". The proceedings in direct violation of the criminal statutes and laws of Illinois were suppressed. The use of the search warrant, the issuance of the writ of attachment reciting a con-

tempt of Court against the state, were deliberately suppressed by the State. The proceedings take on a new and entire substance in the opinion than that for which the petitions for writ of habeas corpus were filed and presented.

There was no burden of proof placed upon the State, nor was any proof made by the State.

There was an abuse of state corrective process and existence of circumstances rendering such process ineffective to protect petitioner's Federal Constitutional rights. Resort to the State Supreme Court failed to afford petitioner a remedy. The State courts serve as an accomplice in the wilful transgressions of the Supremacy Clause of the National Constitution to suppress and conceal vital evidence, judicial oppression and judicial abuse.

There was no process for ascertaining the truth of the record or of the proceedings in the trial court. No State remedies were available to petitioner at the time of filing application for Federal Habeas Corpus on July 2, 1971 in the District Court. State remedies were not then available to petitioner, and are not now available to petitioner.

B) Common Law Writ of Certiorari. The jurisdiction of the Supreme Court for common law writ of certiorari is invoked under section 1651(a) of Title 28 U.S.C.

The order entered in the District Court July 2, 1971 is *res judicata* of the opinion rendered by the Illinois Supreme Court, and is not applicable to federal habeas corpus proceedings. The order made findings outside the substance and contents of the application for writ of habeas corpus and for declaratory judgment.

Petitioner's allegations of deprivation of rights, privileges or immunities secured to him, as a citizen, by the

Constitution and laws of the United States were rejected, as were the allegations of violations of Federal Constitutional rights under the Fourth, Fifth, Sixth, Eighth, Thirteenth and Fourteenth Amendments.

The Clerk of the District Court certified and transmitted the record to the Clerk of the Court of Appeals for the Seventh Circuit on July 7, 1971, prior to the entry of the order of July 13, 1971, denying a certificate of probable cause in the District Court. The Clerk of the Court of Appeals concealed or withheld from filing and docketing the supplemental record from July 8, 1971 until July 23, 1971.

The Court of Appeals made no finding of facts upon the application for issuance of a certificate of probable cause, filed July 29, 1971, but entered an order denying a certificate of probable cause and dismissed the appeal for lack of a certificate of probable cause on August 18, 1971.

There is no motion in Case No. 71-1487 in said Court of Appeals for consolidation with another appeal.

The special, unusual and unprecedented circumstances which warrant invoking of this Court's jurisdiction to issue the writs for habeas corpus and for certiorari as requested in this Amended Petition are set forth later under the heading "Reasons For Granting the Writs" (infra, pp. 17-27).

QUESTIONS PRESENTED.

1. Whether the deliberate suppression and concealment of the search warrant and complaint for search warrant, by deliberate and intentional withholding from filing in an action against petitioner until after consecutive sentences were imposed upon petitioner, is

contrary to, and in direct violation of the Criminal Code of Illinois, and violative of petitioner's right to due process of law secured to him, as a citizen, under the Fourteenth Amendment to the United States Constitution, and deprived petitioner, as a citizen, of the rights, privileges and immunities secured to him by the Constitution and laws of the United States.

2. Was the search warrant issued by Judge McNeal constitutionally invalid because the complaint upon which it was issued did not state any facts of probable cause, nor charge petitioner with an offense committed, nor describe the things to be seized, and issued contrary to, and in direct violation of the standards set by this Court, and in conflict with the decisions rendered by this Court, and the decisions rendered by the Court of Appeals for the Seventh Circuit.

3. Can the searches, seizure, arrest and imprisonment of petitioner be justified by the order entered July 2, 1970, summarily imposing consecutive sentences upon petitioner unless money paid to the "reliable informant" for whom the sheriff signed the complaint for search warrant, when the entire probable cause for the arrest and imprisonment of petitioner consists of the result of the seizure, arrest and imprisonment.

4. Are the orders for alimony and attorney fees awarded to a divorced spouse and the "reliable informant" for whom the sheriff signed the complaint for search warrant, and service of 8 months consecutive sentences imposed upon petitioner unless $28,000 paid for his liberty, an unjust, illegal and invidious discrimination against petitioner, and as applied to petitioner, and a denial of the Equal Protection of the Laws secured to petitioner, as a citizen, by the Fourteenth Amendment to the United States Constitution.

5. Whether the deliberate suppression by the State of a lack of jurisdiction and a lack of evidence to impose consecutive sentences upon petitioner, vital to petitioner's liberty, is such a violation of due process under the Fourteenth Amendment to the Constitution

of the United States to vitiate the consecutive sentences of 8 months unless $28,000 paid.

6. Whether the deliberate suppression of the groundless and fictitious search warrant by the State courts, and denial of a right to jury trial on a charge of an offense for direct contempt of court against the State, for which petitioner was sentenced to 8 months in jail, contravenes petitioner's rights under the United States Constitution, Article III, Section 2, and the Fifth and Sixth Amendments thereto, as applied to the States by the Fourteenth Amendment.

7. Whether the deliberate suppression and concealment of the lack of jurisdiction and the lack of evidence by the State courts to sentence petitioner to 8 months imprisonment and the deliberate suppression and deprivation of petitioner's rights, privileges or immunities secured to him, as a citizen, were called to the attention of the Lower Federal Courts.

CONSTITUTIONAL PROVISIONS.

United States Constitution:

Article III, Section 2, is printed in Appendix N, infra, p. 23a.

Article VI, Clause 2, is printed in Appendix N, infra, p. 23a.

Amendment 4 is printed in Appendix N, infra, p. 23a.

Amendment 5 is printed in Appendix N, infra, p. 23a.

Amendment 6 is printed in Appendix N, infra, pp. 23a-24a.

Amendment 8 is printed in Appendix N, infra, p. 24a.

Amendment 13 is printed in Appendix N, infra, p. 24a.

Amendment 14, Section 1 is printed in Appendix N, infra, p. 24a.

Illinois Constitution of 1870:

Article II, Section 6 is printed in Appendix N, infra, p. 24a.

Article II, Section 19 is printed in Appendix N, infra, p. 25a.

Article VI, Section 5 is printed in Appendix N, infra, p. 25a.

STATUTES INVOLVED.

United States Statutes:

Title 28 U.S.C.:

Section 1651(a) is printed in Appendix O, infra, p. 25a.

Section 2241 is printed in Appendix O, infra, pp. 25a-26a.

Section 2243 is printed in Appendix O, infra, pp. 26a-27a.

Section 2251 is printed in Appendix O, infra, p. 27a.

Section 2253 is printed in Appendix O, infra, p. 27a.

Section 2201 is printed in Appendix O, infra, p. 28a.

Section 2202 is printed in Appendix O, infra, p. 28a.

Title 18 U.S.C.:

Section 241 is printed in Appendix O, infra, p. 28a.

Section 242 is printed in Appendix O, infra, pp. 28a-29a.

Section 371 is printed in Appendix O, infra, p. 29a.

Illinois Revised Statutes (1969):

Chapter 38 (Illinois Criminal Code):

Section 108-3 is printed in Appendix O, infra, p. 29a.

Section 108-7 is printed in Appendix O, infra, p. 30a.

Section 108-10 is printed in Appendix O, infra, p. 30a.

Section 109-1 is printed in Appendix O, infra, p. 30a.

Section 109-3 is printed in Appendix O, infra, p. 31a.

Section 111-3 is printed in Appendix O, infra, pp. 31a-32a.

Chapter 65:

Section 1 is printed in Appendix O, infra, p. 32a.

Section 2 is printed in Appendix O, infra, p. 32a.

STATEMENT UNDER RULE 33(C)

Since the proceedings draw into question the Constitutionality of the Acts of Congress, Title 18 U.S.C. Sections 241 and 242 (Civil Rights, Conspiracy against rights of citizens and Deprivation of right under color of Law (June 25, 1968, c. 645, 62 Stat. 696; Apr. 11, 1968, Pub. L. 90-284, Title 1, Sections 103 (a) (b), 82 Stat. 75) and Section 371 of Title 18 U.S.C. (Conspiracy to commit offense or to defraud United States (June 25, 1948, c. 645 Stat. 701) are drawn in question in this petition, affecting the public interest and the institutions set up to protect and safeguard the public, and Amendments 4, 5, 6, 8, 13 and Section 1 of Amendment 14 to the Constitution of the United States, and Article VI, Clause 2 of the Constitution of the United States are drawn in question in this petition, affecting the public interest, and the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated with the good order of society, and neither the United States nor any agency, officer or employee thereof, is a party, it is noted that 28 U.S.C. Section 2403 may be applicable.

Notice of Existence of Constitutional Questions As To Acts of Congress were filed July 29, 1971, in the Court of Appeals pursuant to Rule 44 of the Federal Rules of Appellate Procedure. On July 29, 1971, the Clerk of the Court of Appeals issued a Certificate of Constitutional Question In Case Where the United States is Not a Party.

STATEMENT OF THE CASE.

Petitioner, served with a search warrant issued for his person, at the address of his home, after a breaking and entering into his home by the sheriff, deputy sheriffs and City police officers on June 26, 1970, was refused to be informed of the charge of the offense committed. There was a search of the premises, a search of petitioner, and handcuffing of petitioner.

Petitioner was taken directly to the County jail, the handcuffs removed and petitioner imprisoned.

The search warrant was not filed in any criminal action against petitioner. There was no complaint for search warrant filed in any criminal action against petitioner.

Petitioner was illegally restrained of his liberty on a groundless and fictitious search warrant and forcibly prevented from defending against the search warrant, intentionally and deliberately suppressed and withheld from filing.

Petition for original writ of habeas corpus was docketed and presented to a Supreme Court Justice on June 29, 1970, on behalf of petitioner, with copy of the search warrant attached thereto, and refused to be acted upon.

The following day, June 30, 1970, a writ of attachment was issued for the person of petitioner in the trial court, reciting a contempt of court against the State. A copy of the Writ was left between the bars of the cell door for petitioner by the sheriff.

On July 2, 1970, after 7 days continuous restraint of petitioner's liberty, and without notice to attorney for petitioner, petitioner was taken into the Circuit Court of Henry County, Illinois, and summarily held in con-

tempt of court in a civil action, and sentenced to serve consecutive sentences unless money paid.

Thereafter, the search warrant and a complaint for search warrant were filed in the civil action, shown filed as of July 1, 1970.

On July 3, 1970, a second and supplementary petition for original writ of habeas corpus was presented to the Illinois Supreme Court Justice, and an order was entered for the original writ of habeas corpus to issue; petitioner to be released upon $5,000 personal recognizance bond.

The personal recognizance bond signed by petitioner charged petitioner with the offense of a Direct Contempt of Court.

The Return upon writ of habeas corpus by the sheriff did not deny the allegations of petitioner. The return did not certify to the true cause of the search, arrest and imprisonment of petitioner on June 26, 1970.

On October 6, 1970, the Illinois Supreme Court entered an order refusing to quash or vacate the search warrant and denied petitioner a complete discharge from custody of the sheriff without any findings of fact.

On May 21, 1971, the Illinois Supreme Court rendered an opinion, suppressing and concealing the criminal processes issued against petitioner, suppressed the judicial oppression, judicial abuse of criminal process, and the misuse of power by officers of the State, to further suppress the deprivations of rights, privileges or immunities secured to petitioner, as a citizen, by the Constitution and laws of the United States. The writ of habeas corpus quashed and petitioner remanded to custody of the sheriff to serve the sentence of the Court.

Application for federal habeas corpus and for declaratory judgment was filed in the District Court July 2, 1971, denied July 2, 1971, upon *res judicata* of the State court opinion. The order made findings outside the substance and contents of the petition.

Certificate of probable cause was denied in the District Court July 13, 1971.

Application for issuance of a certificate of probable cause on appeal from denial of a writ of habeas corpus was filed July 29, 1971, denied by the Court of Appeals, and the appeal dismissed for lack of a certificate of probable cause on August 18, 1971.

REASONS FOR GRANTING THE WRITS.

This is a combined application for writs of habeas corpus and for certiorari. The writ of habeas corpus is prayed for since petitioner is presently confined in the Henry County Jail, Cambridge, Illinois, restrained of his liberty under color of authority of the State of Illinois, in violation of the Fourth, Fifth, Sixth, Eighth, Thirteenth and Fourteenth Amendments to the Constitution of the United States, and in violation of Acts of Congress pertaining to criminal conspiracy and deprivation of rights under color of law.

The State serves as an accomplice in the wilful transgressions of the Supremacy Clause of the United States, with a persistent refusal to adhere to Article VI, Clause 2 of the National Constitution.

Petitioner has been confined and restrained of his liberty upon remandment to the custody of the Sheriff since June 29, 1971, and aside from the considerations of immediate need for release, the reasons for granting the writs are the same.

1.

THE DELIBERATE SUPPRESSION AND CONCEALMENT OF THE SEARCH WARRANT AND COMPLAINT FOR SEARCH WARRANT BY DELIBERATE AND INTENTIONAL WITHHOLDING FROM FILING IN AN ACTION AGAINST PETITIONER UNTIL AFTER CONSECUTIVE SENTENCES WERE IMPOSED UPON PETITIONER, IS CONTRARY TO, AND IN DIRECT VIOLATION OF THE CRIMINAL CODE OF ILLINOIS, AND VIOLATIVE OF PETITIONER'S RIGHT TO DUE PROCESS OF LAW SECURED TO HIM, AS A CITIZEN, UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND DEPRIVED PETITIONER, AS A CITIZEN, OF THE RIGHTS, PRIVILEGES AND IMMUNITIES SECURED TO HIM BY THE CONSTITUTION AND LAWS OF THE UNITED STATES.

The search warrant issued by Judge McNeal on June 26, 1970, was not issued in accord with the Illinois statutes providing for search warrant. The search warrant was not filed in any criminal action against petitioner in the Circuit Court of Henry County, Illinois.

The complaint for search warrant was not filed in any criminal action against petitioner in said Circuit Court.

Petitioner was unlawfully arrested, taken into custody and imprisoned under subterfuge and pretense of a search warrant deliberately withheld from filing in any case against petitioner, to forcibly prevent petitioner from defending against a known, void criminal process of the court, in violation of petitioner's Fourth and Fourteenth Amendment rights secured by the United States Constitution.

> "No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the Constitutional rights of every accused in a criminal proceedings in all courts, state or federal". *Cole* v. *Arkansas*, 333 U.S. 196, 201.

Petitioner, as a citizen, was denied and deprived of all kinds of constitutional needs and guarantees. He was denied due process of law, procedural due process and that certainty of equal protection of the laws to which he is entitled. He has been imprisoned and unlawfully restrained of his liberty without having an opportunity to defend against the abuse and wholesale use of intentional defective criminal process.

A state law enforcement officer who, under color of state law, wilfully, without cause, arrests or imprisons an inhabitant, or injures one who is legally free, thereby commits an offense under Federal statute denouncing deprivation of a citizen's rights, privileges or immunities secured by the Constitution and laws of the United States. *Culp* v. *United States,* 131 F. 2d 93, 96-97 (C.A. 8 Cir.) (1942); *United States* v. *Ramey,* 336 F. 2d 512, 515 (C.A. 4 Cir.) (1964); *United States* v. *Trierweiler,* 52 F. Supp. 4, 6 (D.C. E.D. Ill) (1943).

2.

THE SEARCH WARRANT ISSUED BY JUDGE McNEAL WAS CONSTITUTIONALLY INVALID BECAUSE THE COMPLAINT UPON WHICH IT WAS ISSUED DID NOT STATE ANY FACTS OF PROBABLE CAUSE, NOR CHARGE PETITIONER WITH AN OFFENSE COMMITTED, NOR DESCRIBE THE THINGS TO BE SEIZED AND WAS ISSUED CONTRARY TO, AND IN DIRECT VIOLATION OF THE STANDARDS SET BY THIS COURT, AND IS IN CONFLICT WITH THE DECISIONS RENDERED BY THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The complaint for search warrant, signed by the Sheriff of Henry County, Illinois, was supported by:

"A Reliable Informant, Betty Dolar Kazubowski".

There are no facts of probable cause, nor any statement of some factual reason for the complainant's belief in the reliability of his informant.

No hearing was afforded petitioner. There is no transcript of proceeding for probable cause.

The "fatal flaw" of the complaint for search warrant for the person of petitioner, at the address of the home of petitioner, is that the complaint is *totally devoid of any facts of probable cause,* and *totally devoid of a charge of an offense committed,* and *totally devoid of "the things to be seized".*

The search warrant was not issued in good faith, nor with the expectation of securing a valid conviction, but rather was a part of a calculated, well planned scheme to extort money for the purchase of the liberty of petitioner. *Culp* v. *United States,* 131 F. 2d 93, 96, 97 (C.A. 8 Cir.) (1942).

The judge could not have credited the complaint for search warrant without abdicating his judicial function. *Spinelli* v. *United States,* 393 U.S. 410, 416; *Nathanson* v. *United States,* 290 U.S. 41, 47.

Under our national Constitution, no court, state or Federal, may serve as an accomplice in the wilful transgressions of the law of the United States. *Lee* v. *Florida,* 392 U.S. 378, 386.

The search warrant and complaint for search warrant is in direct violation of the standards set by this Court, and are in conflict with the decisions rendered by this Court, and, in conflict with the decisions rendered by the Court of Appeals for the Seventh Circuit. *Aguilar* v. *Texas,* 378 U.S. 108; *Spinelli* v. *United States,* 393 U.S. 410; *Nathanson* v. *United States,* 290 U.S. 41; *United States* v. *Ventresca,* 380 U.S. 102; *United States* v. *Davis,* 402 F. 2d 171 (C.A. 7 Cir.) (1968); *United States* v. *Mirallegro,* 387 F. 2d 895 (C.A. 7 Cir.) (1967).

3.

THE SEARCHES, SEIZURE, ARREST AND IMPRISONMENT OF PETITIONER CANNOT BE JUSTIFIED BY THE ORDER ENTERED JULY 2, 1970, SUMMARILY IMPOSING CONSECUTIVE SENTENCES UPON PETITIONER UNLESS MONEY PAID TO THE "RELIABLE INFORMANT" FOR WHOM THE SHERIFF SIGNED THE COMPLAINT FOR SEARCH WARRANT, WHEN THE ENTIRE PROBABLE CAUSE FOR THE ARREST AND IMPRISONMENT OF PETITIONER CONSISTS OF THE RESULT OF THE ARREST AND IMPRISONMENT.

The constitutionally invalid search warrant was a process of the State, issued by a state officer and served by a state officer under color of state authority, and known to have been a groundless or fictitious search warrant when issued and when served upon petitioner.

The Fourteenth Amendment to the United States Constitution was ordained for a purpose. It was to secure equal rights to all persons, and to insure to all persons the enjoyment of the rights, privileges or immunities secured or protected by the Constitution and laws of the United States. Such legislation acts on persons who are agents of the State in the denial of the rights which were intended to be secured. *Ex Parte Virginia,* 100 U.S. 339, 346; *Culp* v. *United States,* 131 F. 2d 93, 98 (C.A. 8 Cir.) (1942); *United States* v. *Trierweiler,* 52 F. Supp. 4, 6 (D.C. E.D. Ill.) (1943).

The order entered July 2, 1970, summarily finding petitioner in contempt of court, and imposing consecutive sentences upon petitioner unless money paid to a divorced spouse and her attorneys, was the "object" of the illegal arrest, imprisonment and unlawful restraint of petitioner's liberty and may be described as "come by the exploitation of the illegality". *Wong Sun* v. *United States,* 317 U.S. 471, 488.

The "taint" of the fictitious search warrant, deliberately withheld from filing until after consecutive sentences were imposed, must extend to the consecutive sentences imposed as the "fruits" of the fictitious search warrant.

4.

THE ORDERS FOR ALIMONY AND ATTORNEY FEES AWARDED TO A DIVORCED SPOUSE AND THE "RELIABLE INFORMANT" FOR WHOM THE SHERIFF SIGNED THE COMPLAINT FOR SEARCH WARRANT, AND SERVICE OF 8 MONTHS CONSECUTIVE SENTENCES IMPOSED UPON PETITIONER UNLESS $28,000 PAID FOR HIS LIBERTY, IS AN UNJUST, ILLEGAL AND INVIDIOUS DISCRIMINATION AS APPLIED TO PETITIONER, WITH INTENT TO DENY AND DEPRIVE PETITIONER, AS A CITIZEN, AND WHICH SENTENCES IMPOSED, HAVE DEPRIVED PETITIONER, AS A CITIZEN, OF THE EQUAL PROTECTION OF THE LAWS SECURED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Circuit Court of Henry County, Illinois lost jurisdiction of the divorce proceedings in Case No. 65-D-1240, by the entry of a final decree of divorce awarded to the "reliable informant", Betty Dolar Kazubowski, on June 13, 1966, and by the separate and supplementary property decree thereafter entered and filed August 31, 1966.

The attorney for the divorced spouse prepared the separate and supplementary property decree and provided for $5,000 in lieu of and in full satisfaction of all rights to alimony, and further provided that Betty Dolar Kazubowski is permanently barred from any and all additional rights to alimony, and that each of the parties pay their own attorney fees and their own obligations from and since November 20, 1965.

The property decree did not retain jurisdiction over the subject matter or of petitioner for further considera-

tion of alimony or attorney fees. *Smith* v. *Johnson,* 321 Ill. 134, 141.

The use of intentional defective criminal process and deliberate suppression of the criminal process to coerce illegal payments of money under subterfuge and pretense of criminal actions against petitioner, is not authorized by the Statutes or laws of Illinois, nor by the principles or usages of equity. *De Beers Consolidated Mines, Ltd.* v. *United States,* 325 U.S. 212, 222-223.

The cumulative affect is an unjust, illegal and invidious discrimination against petitioner, as a citizen, and as between other persons in similar circumstances, material to their rights. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution protects petitioner from arbitrary and invidious discrimination by the State. *Griffin* v. *Illinois,* 351 U.S. 12, 17, 18; *Williams* v. *Illinois,* 399 U.S. 235, 240; *Yick Wo* v. *Hopkins,* 118 U.S. 356, 373; *Cole* v. *Arkansas,* 333 U.S. 196, 201; *Oyama* v. *California,* 332 U.S. 633, 644.

Section 19 of Article II of the Illinois Constitution of 1870 provides that "Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay".

Petitioner has been denied the right to equal access to the courts and denied all remedies for the enforcement of his rights.

5.

DELIBERATE SUPPRESSION BY THE STATE OF A LACK OF JURISDICTION AND A LACK OF EVIDENCE TO IMPOSE CONSECUTIVE SENTENCES UPON PETITIONER, VITAL TO PETITIONER'S LIBERTY, IS SUCH A VIOLATION OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED "TATES TO VITIATE THE CONSECUTIVE SENTENCES FOR 3 MONTHS UNLESS $28,000 PAID FOR HIS LIBERTY.

The State has frustrated the proceedings and created a "procedural morass" by use of criminal processes to arrive at a conclusioon to award a divorced spouse and "reliable informant" alimony and attorney fees. The charge of an offense of direct contempt of court cannot be squared with the pretense of a hearing on July 2, 1970, for contrivance of a conviction imposing consecutive sentences for the benefit of the divorced spouses and "reliable informant", for whom the sheriff signed the complaint for search warrant.

The hearing on July 2, 1970, but without notice to attorney for petitioner, without the burden of proof placed upon the State, and without the presence of the State's Attorney, was used merely as a means of depriving petitioner of his liberty through a deliberate deception of court and to procure a conviction to imprison petitioner to extort $28,000 for the purchase of his liberty.

The conduct of petitioner for the charge of direct contempt of court has not been disclosed by the State.

Petitioner's allegations of deliberate suppression of the lack of jurisdiction and lack of evidence upon which to convict petitioner and to impose consecutive sentences was favorable and vital to petitioner. These charges of deprivation of rights guaranteed by the Constitution and laws of the United States, if proven, would entitle petitioner to release from present custody. *Pyle* v.

Kansas, 317 U.S. 213, 216; *United States ex rel. Montgomery* v. *Ragen,* 86 F. Supp. 382, 387-388 (D.C. N.D. Ill.) (1949); *United States ex rel. Almeida* v. *Baldi,* 195 F. 2d 815, 822 (C.A. 3 Cir.) (1952); 33 A.L.R. 2d 1407.

Petitioner was sentenced as a criminal defendant but without the guarantees of a criminal defendant, without a criminal trial and without the burden being placed upon the State to prove anything—even "beyond a reasonable doubt".

6.

DELIBERATE SUPPRESSION OF THE GROUNDLESS AND FICTITIOUS SEARCH WARRANT BY THE STATE COURTS AND DENIAL OF A RIGHT TO JURY TRIAL ON A CHARGE OF AN OFFENSE FOR DIRECT CONTEMPT OF COURT AGAINST THE STATE, FOR WHICH PETITIONER WAS SENTENCED TO 8 MONTHS IN JAIL, CONTRAVENED PETITIONER'S RIGHTS UNDER THE UNITED STATES CONSTITUTION, ARTICLE III, SECTION 2, AND THE FIFTH AND SIXTH AMENDMENTS THERETO, AS APPLIED TO THE STATES BY THE FOURTEENTH AMENDMENT.

Petitioner was denied the right to a jury trial by the lack of a charge of an offense for which the search warrant issued, and denied the right to be released from imprisonment upon the lack of a charge of an offense committed, by the deliberate suppression of the fictitious search warrant.

Upon the charge of the offense of a direct contempt of court against the State by the writ of attachment, and as recited in the personal recognizance bond dated July 3, 1970, petitioner was again denied the right to jury trial.

A charge of the offense of a direct contempt against the State is a crime in the ordinary sense; it is a violation of the laws, a public wrong which is punishable by fine or imprisonment. Criminal contempt is a crime in

every fundamental respect and is a crime to which the jury trial provisions of the Federal Constitution apply. *Bloom* v. *Illinois*, 391 U.S. 194, 201-202.

Consecutive sentences imposed for 8 months in jail on a charge of an offense for direct contempt, without being informed of the nature of the conduct for the charge of direct contempt, violates petitioner's rights to be informed of the nature of the offense, to have counsel present and violates his rights to a jury trial under the United States Constitution, Article III, Section 2, and the Fifth and Sixth Amendments thereto, as applies to the States by the Fourteenth Amendment.

Petitioner's sentences of 8 months in jail unless $28,000 paid, is a fine or imprisonment.

7.

DELIBERATE SUPPRESSION AND CONCEALMENT OF THE LACK OF JURISDICTION AND THE LACK OF EVIDENCE BY THE STATE COURTS TO SENTENCE PETITIONER TO 8 MONTHS IMPRISONMENT AND THE DELIBERATE SUPPRESSION AND DEPRIVATION OF PETITIONER'S RIGHTS, PRIVILEGES AND IMMUNITIES SECURED TO HIM, AS A CITIZEN, WERE CALLED TO THE ATTENTION OF THE LOWER FEDERAL COURTS.

State determinations not fairly supported by the record cannot be conclusive of federal rights. If the State withholds effective remedy, as in the instant case, the Federal Courts have the power and duty to provide it. *Townsend* v. *Sain*, 372 U.S. 293, 313-316; *Fay* v. *Noia*, 372 U.S. 391, 441; *Peyton* v. *Rowe*, 391 U.S. 54, 67.

The habeas corpus jurisdiction of the lower Federal Court is not the judgment of a state court but *detention simpliciter*.

The order entered in the District Court July 2, 1971 is *res judicata* of the opinion rendered by the Illinois Su-

preme Court and not applicable to federal habeas corpus proceedings. *Fay* v. *Noia,* 372 U.S. 391, 423.

The order of the District Court made findings and conclusions outside the contents and substance of the application presented. Petitioner's allegations and claims of denials, deprivation and violations of Federal Constitutional rights were rejected by the Judge of the District Court. In addition, petitioner's application filed in the District Court also sought declaratory judgment.

Federal habeas corpus prevents the State from closing off petitioner's last opportunity to vindicate his constitutional rights. The Court of Appeals should have issued the certificate of probable cause and allowed the appeal, granted petitioner's application for release and stay of proceedings pending the appeal.

CONCLUSION.

The questions raised in this case are of Constitutional proportion and are of such importance to our Constitutional jurisprudence that this Court should grant petitioner the relief sought so that the ends of justice may be served.

Respectfully submitted,

/s/ Edward J. Kazubowski

State Of Illinois
County Of Henry—ss.

Edward J. Kazubowski, being first duly sworn deposes and says he is the petitioner pro se in the above entitled cause, that he has read the foregoing amended petition and that the facts therein stated are true.

/s/ Edward J. Kazubowski

Subscribed and sworn to before me
this 25th day of October, 1971.

/s/ Louise M. Ouart

Notary Public (Seal)

My Comm. Expires: Feb. 26, 1974.

APPENDIX A

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Wednesday, August 18, 1971

Before

Hon. LUTHER M. SWYGERT, Chief Judge

Hon. THOMAS E. FAIRCHILD, Circuit Judge

Hon. ROBERT A. SPRECHER, Circuit Judge

EDWARD J. KAZUBOWSKI,
Petitioner-Appellant,

No. 71-1487 vs.

HAROLD J. JOHNSON, as Sheriff of Henry County, Illinois, et al.,
Respondents-Appellees.

Appeal from the United States District Court for the Southern District of Illinois, Northern Division

IT IS ORDERED by the Court that the application of counsel for petitioner-appellant, Edward J. Kazubowski, for the release of petitioner-appellant pending appeal be and the same is hereby denied.

IT IS FURTHER ORDERED by the Court that the application of counsel for petitioner-appellant for the issuance of a certificate or probable cause for appeal from the order of the United States District Court for the Southern District of Illinois, Northern Division, denying petition for writ of habeas corpus be and the same is hereby denied.

IT IS FURTHER ORDERED by the Court that the motion of counsel for petitioner-appellant to consolidate this appeal with an appeal from an order of the district court for the Southern District of Illinois, Northern Division, denying a certificate of probable cause for appeal be and the same is hereby denied.

IT IS FURTHER ORDERED AND ADJUDGED by this Court that this appeal from an order of the United States District Court for the Southern District of Illinois, Northern Division, be and the same is hereby dismissed with costs on the Court's own motion, for lack of a certificate of probable cause for appeal.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION

In the Matter of the Application of EDWARD J. KAZUBOWSKI for a Writ of Habeas Corpus and for Declaratory Judgment, EDWARD J. KAZUBOWSKI, Petitioner, v. HAROLD T. JOHNSON, as Sheriff of Henry County, Illinois, LOY E. RAY, Sheriff of Henry County, Illinois, WILLIAM J. SCOTT, Attorney General of the State of Illinois, and RICHARD B. OGILVIE, Governor of the State of Illinois, Respondents.	FILED JUL 2 - 1971 at.....O'clock.....M WILLIAM J. LITTELL, CLERK CIVIL ACTION NO. P-3269

ORDER DISMISSING
PETITION AND COMPLAINT
WITH PREJUDICE

Upon reading the petition and complaint herein, immediately upon the filing thereof at the request of counsel for petitioner, and consideration of same, together with the pertinent exhibits attached thereto, it is apparent that the relief prayed must be denied and that said petition must be dismissed with prejudice.

It is apparent that the whole substance of petitioner's assertions of alleged wrongs done to him by the named respondents and others arise out of a 1966 divorce decree which has become final and with which he does not choose to comply. His basic allegations have had consideration of this court, through its Chief Judge in Case No. P-3028, which was a suit for injunction and damages and which was terminated by Final Order and Judgment against him on May 20, 1969.

A prior petition for habeas corpus, with 55 exhibits attached, was denied by the undersigned judge on November 18, 1970, in Case No. P-3206.

and applications for Certificate of Probable Cause for Appeal were denied by the undersigned and by the Court of Appeals for the Seventh Circuit.

The matter has been considered by the courts of Illinois before and since prior proceedings in this court, including full discussion in opinion handed down by the Supreme Court of Illirois on May 21, 1971, which led to remand of petitioner to the custody of the Sheriff of Henry County, Illinois, which custody is here complained of. The only basis of complaint is alleged corruption, fraud, concealment, etc. by judges and justices of the Illinois courts and other public officials, which are wholly contradicted by a clear showing of due process of law made by the attached exhibits. Plaintiff's counsel simply disagrees with all the courts which have considered the matter on the applicable law, or desires to relitigate matters which are wholly immaterial to the reason for petitioner's present confinement.

The petition and complaint herein, with exhibits, demonstrates that there is no basis for any of the relief prayed in the Federal Constitution or statutes, and it is hereby dismissed with prejudice at plaintiff's cost.

Robert D. Morgan
United States District Judge

Entered: July 2, 1971

A True Copy
Attest:
[illegible], Clerk
U. S. District Court
Southern Dist. of Ill.
DATE: [illegible]

APPENDIX C

OPINION

SUPREME COURT OF ILLINOIS

United States of America

State of Illinois
Supreme Court } ss.

At a Term of the Supreme Court, *begun and held in Springfield, on Mon*

tenth *day of* May *in the year of our Lord, one thousand nine hund*

seventy-one , *within and for the State of Illinois.*

PRESENT: ROBERT C. UNDERWOOD, CHIEF JUSTICE

JUSTICE WALTER V. SCHAEFER — JUSTICE THOMAS E. KLUCZYNSKI

JUSTICE DANIEL P. WARD — JUSTICE CHARLES H. DAVIS

JUSTICE JOSEPH H. GOLDENHERSH — JUSTICE HOWARD C. RYAN

WILLIAM J. SCOTT, ATTORNEY GENERAL

ROBERT G. MILEY, MARSHAL

ATTEST: JUSTIN TAFT, CLERK

Be It Remembered, *that afterwards, to-wit, on the* 21st *day of* May

the opinion of the Court was filed in said cause and entered of record in the words and figures following

People ex rel. Edward J. Kazubowski,
Petitioner
No. 43368 vs. Habeas Corpu
Loy E. Ray, Sheriff of Henry County, Illinois,
Respondent

JUSTIN TAFT
CLERK OF THE SUPREME COURT
STATE OF ILLINOIS

Docket No. 43368—Agenda 21—March, 1971.
THE PEOPLE *ex rel.* Edward J. Kazubowski, Petitioner, *vs.* LOY E. RAY, Sheriff, Respondent.

Mr. JUSTICE DAVIS delivered the opinion of the court:

The petitioner, Edward J. Kazubowski, filed a petition for a writ of *habeas corpus* in this court, seeking his release from the custody of Harold T. Johnson, Sheriff of Henry County, where he had been confined in the Henry County jail as a result of contempt citations. Subsequently, he filed a second or supplemental petition, requesting the same relief. A writ was issued, pending a hearing before this court, releasing the petitioner from the sheriff's custody. A return to the writ was filed by the respondent, and the petitioner filed an answer to the return. This matter comes before the court on this record.

The petitioner had been in the custody of the respondent under three separate orders of commitment for contempt of court entered by the circuit court of the 14th Judicial Circuit, Henry County. All three orders arose out of a divorce proceeding in which the petitioner was the defendant. In *Kazubowski* v. *Kazubowski*, 93 Ill. App. 2d 126, the decree for divorce, the property settlement decree, and orders finding the petitioner in contempt for failure to pay alimony and attorney's fees were sustained. We denied a petition for leave to appeal from the judgment of the appellate court (39 Ill.2d 625), and the United States Supreme Court denied a petition for writ of *certiorari*. 393 U.S. 1117, 22 L. Ed. 2d 122, 89 S. Ct. 993.

Subsequently, the defendant filed three separate and direct appeals to this court wherein he alleged that the effect of the orders of the trial court, entered after his unsuccessful appeal and the decision of the appellate court, was to deprive him of his constitutional rights. Those appeals were consolidated for hearing, and all final orders appealed from were affirmed by this court in *Kazubowski* v. *Kazubowski*, 45 Ill.2d 405. The facts of the proceedings below were fully stated in this decision and need not be restated here.

The petitioner was committed, pursuant to three orders of the circuit court: one dated May 2, 1969, which this court has found to be valid (45 Ill.2d 405, 416, 417); an earlier unappealed order dated October 7, 1966; and a third order dated July 2, 1970, which was entered by the trial court subsequent to the aforementioned appeals, from which no

appeal was taken. The unappealed orders must be presumed to be valid.

In seeking a writ of *habeas corpus,* the petitioner questions the jurisdiction of the trial court to enter two of the three orders holding him in contempt. He construes the contempt citations to be criminal rather than civil and challenges the two orders in that they fail to meet the requirements of due process in a criminal contempt proceeding. Criminal contempt is conduct which is directed against the dignity and authority of the court or a judge acting judicially, while civil contempt ordinarily consists of failing to do something ordered to be done by a court in a civil action for the benefit of the opposing litigant therein. (*People ex rel. Chicago Bar Association* v. *Barasch,* 21 Ill.2d 407, 409; *People* v. *Gholson,* 412 Ill. 294, 298.) These contempt actions arose out of a divorce proceeding, and were brought by the plaintiff in that proceeding for the purpose of collecting unpaid alimony, attorney's fees, and interest; they were not punitive in nature, but rather, were prosecuted to enforce the rights of the plaintiff in the divorce proceeding—the collection of money due under valid orders of the court; and they are civil in nature and, thus, are not subject to the due-process requirements of indirect criminal contempt proceedings.

In construing these contempt proceedings as criminal in nature, the petitioner twice filed his special and limited appearance to the rules to show cause which the court had issued prior to the entry of the contempt findings. He refused to offer any testimony at the hearings on the contempt citations, choosing instead to stand on his challenge to the jurisdiction of the court to hold him in contempt. By so doing, he apparently sought to preserve for review the question of whether these are, in fact, indirect criminal contempts.

The petitioner is in error in his contention for three reasons. First, he originally consented to the general jurisdiction of the court over his person as well as over the subject matter of the divorce when he entered his general appearance in the original divorce proceeding and sought and obtained a jury trial. In *Martin* v. *Chicago and Milwaukee Electric R.R. Co.,* 220 Ill. 97, at page 99 this court said: "There can be no question as to the jurisdiction of the person of the appellant Martin, for the reason that he made a motion for a separate jury trial without limiting his appearance, which brought him personally before the court for all the purposes of this proceeding. The fact that he *afterwards,* as the record shows, entered a special appearance and moved

the court to dismiss the petition, and *afterwards* filed the so-called plea to the jurisdiction, does not deprive the court of the jurisdiction to his person acquired by his general appearance theretofore entered in moving for a separate jury trial." By entering his general appearance and contesting the divorce action, the petitioner submitted to the jurisdiction of the court to enter orders against him. *Lord* v. *Hubert*, 12 Ill.2d 83, 86, 87.

Secondly, the civil contempt proceedings of which the petitioner complains were brought to enforce the final orders of the court entered with respect to alimony, attorney's fees and interest. These proceedings were logical extensions of the original divorce proceeding and the jurisdiction invoked to make the divorce and property settlement decrees effective extends to any subsequent proceedings taken to enforce such final decrees. (*Leman* v. *Krentler-Arnold Hinge Last Co.*, 284 U.S. 448, 454, 76 L. Ed. 389, 52 S. Ct. 238.) Under this view, only an appropriate notice of the respective contempt proceedings was required, and the petitioner received such notice.

Under analogous circumstances, the United States Supreme Court in *Leman* held that additional proceedings to cite a defendant for civil contempt are not to be construed "as an original complaint but as a continuation of the proceeding already begun." Also, in 17 Am. Jur. 2d 44, it is stated that: "The fact that a divorce decree has become final does not deprive the court of power to enforce an order for the payment of costs, and attorneys' fees by contempt proceedings."

Thirdly, the petitioner is in error because he actually seeks to review the divorce orders by means of the extraordinary remedy of *habeas corpus*, rather than by appeal. The writ of *habeas corpus* may not be used to perform the functions of an appeal, and it is only where the judgment of commitment is void—not merely erroneous—that a discharge should be granted. *People ex rel. Merrill* v. *Hazard*, 361 Ill. 60, 63.

The petitioner unsuccessfully exhausted his remedies as to the commitment order of May 2, 1969, and never appealed the commitment orders of October 7, 1966, or July 2, 1970. The decrees and contempt orders entered by the circuit court below are all valid and enforceable. The decrees and orders from which the petitioner seeks relief have either been adjudicated adversely to him on review or no appeal was taken therefrom, and he cannot use the writ of *habeas*

corpus to obtain either a review or an additional review thereof.

The writ is quashed and the petitioner is remanded to the custody of the sheriff of Henry County, to serve the sentence of the court, or until released by due process of law.

Writ quashed and petitioner remanded.

Mr. JUSTICE WARD took no part in the consideration or decision of this case.

APPENDIX D

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT

HENRY COUNTY

BETTY DOLAR KAZUBOWSKI

vs.

EDWARD J. KAZUBOWSKI
Defendant

SEARCH WARRANT

TO ALL PEACE OFFICERS OF THE STATE OF ILLINOIS or _____:

ON THIS DAY Harold. T. Johnson, COMPLAINANT, HAS SUBSCRIBED and sworn to a complaint for search warrant before me. Upon examination of the complaint I find that it states facts sufficient to show probable cause and I therefore command that the premises of 133 E. Division Street, Kewanee, Illinois

be searched and the following [redacted] thereof from Person, EDWARD J. KAZUBOWSKI be seized therefrom:

I further command that a return of anyone so seized shall be made without unnecessary delay before me or before Judge DAN H. MC NEAL or before any court of competent jurisdiction.

Dan H. McNeal
Judge

Date of Issuance June 26 19 70

Time of Issuance _____

Sheriff's Fees
Service - $1.00
Mileage - 6.40
Return - 1.00
$8.40

RETURNED NOT EXECUTED

I did not execute this warrant within 96 hours from the time of issuance and it is hereby returned to the court as void and not executed.

_____
Officer

Date Returned _____ 19__

Time Returned _____

Filed JULY 1-1970
Kitty Lowder, Clerk of Circuit Court
By Ellen Crowder, Deputy

APPENDIX E

Chapter 38
Paragraph 108-3
Illinois Revised Statutes

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT

HENRY COUNTY

COMPLAINT FOR SEARCH WARRANT

HAROLD T. JOHNSON complainant now appears before the undersigned judge of the Circuit Court of said County and requests the issuance of a search warrant to search the premises of 137 E. Division Street, Kewanee, Illinois (premises) and seize the following instruments, articles and things constituting evidence of the commission of, or which are intended for use in the commission of, or which are the fruits of the crime of possession of narcotic drugs, to-wit: person, EDWARD J. KASUBOWSKI

Complainant says that he has probable cause to believe, based upon the following facts, that the above listed person is now located upon the premises set forth above:

1. A Reliable Informant, Betty Dolar Kasubowski.

Harold T. Johnson
Complainant

Subscribed and sworn to before me on June 26 1970

Judge

Filed July 1-1970
Circuit Clerk of Circuit Court
By Eileen Chandler Deputy

INVENTORY OF ANY ITEMS SEIZED UNDER SEARCH WARRANT

I, Harold T. Johnson, being first duly sworn, upon oath depose and say that pursuant to the authority contained in the within search warrant, I did on the 30th day of June, A. D. 19 70, seize and take possession of the following person:

Edward J. Kazubowski

Harold T. Johnson

Subscribed and sworn to before me this 30th day of June, A. D. 1970.

Betty M. Brown

Notary Public

Filed July 1-1970
Mike Lessler, Clerk of Circuit Court
By Ellen Lessler, Deputy

APPENDIX F

IN THE CIRCUIT COURT OF THE 14TH JUDICIAL CIRCUIT OF ILLINOIS

GENERAL DIVISION FOR HENRY COUNTY

BETTY DOLAR KAZUBOWSKI,
Plaintiff

vs.

EDWARD J. KAZUBOWSKI,
Defendant

NO. 65 D 1240

ATTACHMENT WRIT

STATE OF ILLINOIS)
)SS
COUNTY OF HENRY)

THE PEOPLE OF THE STATE OF ILLINOIS TO THE SHERIFF OF SAID COUNTY,

GREETING:

We command you to take Edward J. Kazubowski and him safely keep, so that you have his body before the Circuit Court of Henry County on the 2nd day of July, 1970, at 10:00 o'clock A.M. at Cambridge in said county, to answer unto the People of the State of Illinois for a contempt of court, after having been duly served with process. And have you then and there this writ.

WITNESS: Dean Leander, Clerk of said Court and the seal thereof, at Cambridge, in said county this 30th day of June, 1970.

Dean Leander
Clerk

State of Illinois)
) SS
County of Henry)

I have duly served the within by delivering a true copy thereof personally to the within named defendant EDWARD J. KAZUBOWSKI as I am herein commanded this 30th day of June, 1970.

Harold T. Johnson
Sheriff

Sheriff's Fees

Service - $4.00
Mileage - .40
Return - 3.00
$7.40

Filed July 2-1970
Dean Leander, Clerk of Circuit Court
By Dean Leander, Dep.

APPENDIX G

IN THE CIRCUIT COURT OF THE 14TH JUDICIAL CIRCUIT OF ILLINOIS

GENERAL DIVISION FOR HENRY COUNTY

BETTY DOLAR KAZUBOWSKI, Plaintiff, v. EDWARD J. KAZUBOWSKI, Defendant.	No. 65 D 1240 in chancery ORDER OF COMMITMENT

This cause coming on further to be heard on the rule to show cause entered on June 30, 1970, and the defendant appears in court pursuant to said order of June 30, 1970, and the court hears the testimony of plaintiff and arguments of her counsel and defendant refuses to offer testimony, and the court being fully advised in the premises finds it has jurisdiction of the subject matter and the parties hereto and that defendant Edward J. Kazubowski is justly indebted to plaintiff for the sum of $3875.00 due on September 1, 1969, by the decree of this court entered August 31, 1966, with interest at 5% thereon to date, and is justly indebted to Andrews & Andrews in the amount of $5652.00 and to Gregg A. Young in the amount of $5325.00 for fees and expenses allowed by order herein on April 28, 1969, with interest thereon to date; and the court finds that said defendant Edward J. Kazubowski has failed and neglected to show any valid and just reason for his wilful and contumacious refusal to comply with said orders and decrees of this court and has wholly failed to show any just or legal reason why he should not be found guilty of contempt of this court and punished accordingly, and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the respondent Edward J. Kazubowski is guilty of contempt of this court for his wilful and contumacious refusal to pay the sum of $3875.00 to plaintiff as heretofore ordered by this court, and the sum of $5652.00 to Andrews & Andrews and the sum of $5325.00 to Gregg A. Young as heretofore ordered by this court.

Filed July 2-1970
Dean Leeds, Clerk of Circuit Court
By Ellen Leeds Deputy

IT IS FURTHER ORDERED that the respondent , Edward J. Kazubowski, be and he is hereby committed to the common jail of Henry County there to remain charged with contempt of the Circuit Court of Henry County for the period of sixty days, to be served consecutively after the the previous sentences for contempt now in force in this cause, unless he shall purge himself of said contempt by delivering over to the plaintiff Betty Dolar Kazubowski the sum of $3875.00 with interest at 5% per annum from September 1, 1969, to Andrews & Andrews the sum of $5652,00 with interest thereon at 5% from April 28, 1969, and to Gregg A. Young the sum of $5325.00 with interest thereon at 5% from April 28, 1969, or until he is released by due process of law.

IT IS FURTHER ORDERED that a mittimus issue out of and under the seal of this court directed to the Sheriff of Henry County commanding him that he take the body of the respondent Edward J. Kazubowski and him safely keep in the common jail of Henry County there to remain charged with contempt of the Circuit Court of Henry County for a period of sixty days unless he shall purge himself of said contempt by delivering said sums of money as aforesaid or until he shall be released by due process of law.

Dated July 2, 1970.

Richard Altmeyer
Judge

APPENDIX H

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS
EX REL EDWARD J. KAZUBOWSKI
Relator

vs

HAROLD T. JOHNSON, Sheriff of
Henry County, Illinois
Respondent

O R D E R

This cause coming on to be heard on the motion by petitioner for leave to file a petition for an original writ of habeas corpus, and upon petitioner's subsequent motion to file an additional and supplemental petition for an original writ of habeas corpus, and the Court being fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the motions by petitioner for leave to file these petitions for an original writ of habeas corpus be and the same are hereby consolidated and allowed.

IT IS FURTHER ORDERED that the writ shall issue directed to Harold t. Johnson, Sheriff of Henry County, Illinois. Answer to be filed on or before July 13, 1970. Production of the body is ordered waived.

IT IS FURTHER ORDERED that petitioner EDWARD J. KAZUBOWSKI be released from the custody of the Sheriff upon his personal recognizance in the sum of FIVE THOUSAND ($5,000.00) DOLLARS conditioned according to law and until further order of this Court.

ENTER:

Edward B. Dunn
Walter V. Schaefer (per EK)
Caswell J. Crebs (per EK)
Marvin J. Burt (per EK)
by Edward Kazubowski
granted.

Dated: July 3, 1970

APPENDIX I

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE 1st JUDICIAL CIRCUIT

HENRY COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS
vs.
EDWARD J. KAZUBOWSKI
Defendant

No. 65 D-1240

RECOGNIZANCE OF DEFENDANT FOR APPEARANCE

The undersigned defendant, being charged with the offense of DIRECT CONTEMPT OF COURT

and now being admitted to bail in the sum of $5,000, acknowledges himself to be indebted to THE PEOPLE OF THE STATE OF ILLINOIS in the penal sum of $5,000, to be levied upon his property of whatever kind and wherever situated, undertakes the following as conditions of his bail:

(1) ~~that said defendant shall appear in the Circuit Court of the Judicial Circuit, County, Illinois, and before the division thereof as required, on the day of 19 to answer said charge and appear thereafter as ordered by said court until discharged on until final order of the court~~ THAT HE SHALL BE RELEASED FROM CUSTODY OF HENRY COUNTY SHERIFF UNTIL FURTHER ORDER OF THE SUPREME COURT OF ILLINOIS

(2) that said defendant shall submit himself to the orders and process of said court;

(3) that said defendant shall not depart this State without leave of said court.

If said defendant shall comply with the conditions of his bail above set forth, this recognizance shall become null and void; otherwise it shall remain in full force and effect and said defendant shall be liable thereon.

EXECUTED this 3rd day of JULY 19 71

Edward J. Kazubowski (SEAL)
Defendant

TAKEN before me this 3rd day of JULY 19 71

NOTARY PUBLIC

APPROVED by me this day of 19

Judge or Magistrate

(Defendant shall give written notice to the Clerk of the Circuit Court of any change in his address within 24 hours after such change. Paragraph 110-12, Chapter 38, Illinois Revised Statutes)

APPENDIX J

United States of America

State of Illinois } ss.
Supreme Court }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the fourteenth day of September in the year of our Lord, one thousand nine hundred and seventy, within and for the State of Illinois.

PRESENT: ROBERT C. UNDERWOOD, CHIEF JUSTICE

JUSTICE WALTER V. SCHAEFER — JUSTICE THOMAS E. KLUCZYNSKI

JUSTICE DANIEL P. WARD — JUSTICE JOHN T. CULBERTSON, JR.

JUSTICE CASWELL J. CRISS — JUSTICE MARVIN F. DUNN

WILLIAM J. SCOTT, ATTORNEY GENERAL

ROBERT G. MILNE, MARSHAL

ATTEST: JUSTIN TAFT, CLERK

BE IT REMEMBERED, that, to-wit: on the 5th day of October, A.D. 1970, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

People ex rel. Edward J. Kazubowski,
Petitioner

No. 43368 vs. Habeas Corpus

Harold T. Johnson, Sheriff of Henry County, Illinois,
Respondent

And now, on this day, the Court having duly considered the motion by petitioner to quash or vacate search warrant and that an order be entered for complete discharge of petitioner, and being fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the motion by petitioner to quash or vacate search warrant and that an order be entered for complete discharge of petitioner be, and the same is, denied.

I, JUSTIN TAFT, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of an order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 30th day of October, A.D. 1970.

Justin Taft
Clerk,
Supreme Court of the State of Illinois.

APPENDIX K

IN THE CIRCUIT COURT OF HENRY COUNTY
14TH JUDICIAL DISTRICT
GENERAL DIVISION

May 7, 1969
Irene Dickens

BETTY DOLAR KAZUBOWSKI,
Plaintiff

vs.

EDWARD J. KAZUBOWSKI,
Defendant

NO. 65 D 1240

ORDER OF COMMITMENT

This cause coming on to be heard further upon the rule to show cause heretofore entered on April 28, 1969 and it appearing that the defendant, Edward J. Kazubowski, has filed only his special and limited appearance by his counsel in this cause and that on this day of May 2, 1969, when said defendant was ordered to appear herein and either answer by a pleading or testify herein concerning his circumstances and ability to comply with the Order of September 23, 1966, the said defendant, Edward J. Kazubowski fails to appear herein and the court having heard the arguments of counsel for the parties and being fully advised in the premises finds:

1. That it has jurisdiction of the subject matter hereof and the parties hereto.

2. That defendant, Edward J. Kazubowski, is justly indebted for equitable alimony in the amount of $8,820 as required of him by the Decree of September 23, 1966 in this cause.

3. That said defendant, Edward J. Kazubowski, has failed and neglected to show any valid and just reason for his wilful and contumacious refusal to comply with said decree.

4. That said respondent, Edward J. Kazubowski, has wholly failed and neglected to show any just or legal reason why he should not be found guilty of contempt of this court and punished accordingly, and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the respondent, Edward J. Kazubowski, is guilty of contempt of this court for his wilful and contumacious refusal to pay the sum of $8,820 as heretofore ordered by this court.

IT IS FURTHER ORDERED that the respondent, Edward J. Kazubowski, be and he is hereby committed to the common jail of Henry County there to remain charged with contempt of the Circuit Court of Henry County for the period of six (6) months unless he shall purge himself of said contempt by delivering over to the plaintiff, Betty Dolar Kazubowski, the sum of $8,820 together with interest thereon at the rate of five per cent (5%) per annum from March 12, 1969, the date upon which the mandate from the appeal courts was returned and filed with this court, or until he is released by due process of law.

IT IS FURTHER ORDERED that a mittimus issue out of and under the seal of this court directed to the Sheriff of Henry County commanding him that he take the body of the respondent, Edward J. Kazubowski and him safely keep in the common jail of Henry County there to remain charged with contempt of the Circuit Court of Henry County for a period of six (6) months unless he shall purge himself of said contempt by delivering over to the plaintiff, Betty Dolar Kazubowski, the sum of $8,820 together with interest at the rate of five per cent (5%) per annum from and after March 12, 1969 or until he shall be released by due process of law.

Dated this 2nd day of May, 1969.

Earl E. Rink
Judge

APPENDIX L

IN THE CIRCUIT COURT OF THE 14th JUDICIAL CIRCUIT OF ILLINOIS
GENERAL DIVISION FOR HENRY COUNTY

BETTY DOLAR KAZUBOWSKI, Plaintiff,	)	No. 65-D-1240 in Chancery
V.	)	MITTIMUS
EDWARD J. KAZUBOWSKI, Defendant.	)	

WHEREAS, on the 2nd day of July, 1970, a certain Order made in the Circuit Court of Henry County, Illinois, by Hon. Richard Stengel, Judge of said court in a certain cause number 65 D 1240 pending in said court herein where Betty Dolar Kazubowski was plaintiff and Edward J. Kazubowski was defendant, it was ordered that Edward J. Kazubowski be committed to the common jail of Henry County, Illinois, there to remain charged with the direct contempt mentioned in such order for sixty days or until released by due process of law, and that a warrant for that purpose issue,

NOW, we command you that you take the body of said Edward J. Kazubowski and closely and safely keep him in your custody in the common jail of Henry County until he shall have served sixty days, to be served consecutively after previous sentences, or until released by due process of law; and you are to return this Writ forthwith to this court with an endorsement thereon showing in what manner you shall have executed the same.

WITNESS, Dean Leander, Clerk of said court, and the seal thereof at Cambridge, Illinois, this 29th day of June, 1971,

Dean Leander
Clerk of the Circuit Court

by Irene Pickens, Deputy

State of Illinois)
) SS
County of Henry)

On June 29, 1971, I took custody of Edward J. Kazubowski at his home at 133 E. Division St., Kewaneo, Illinois and I am keeping him in the county jail, Cambridge, Illinois.

Lay E. Lus 305PM 6/29/71

Sheriff's Fees
Service - 4.00
Mileage - 6.40
Return - 3.00
$13.40

APPENDIX M

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT

HENRY COUNTY, ILLINOIS

BETTY DOLAR KAZUBOWSKI, Plaintiff	
vs.	65-D-1240
EDWARD J. KAZUBOWSKI, Defendant.	In Chancery

MITTIMUS

WHEREAS, on the 2nd day of May, 1969, a certain Order made in the Circuit Court of Henry County, Illinois, by Hon. Paul E. Rink, Judge of said Court in a certain cause number 65-D-1240 pending in said Court herein where Betty Dolar Kazubowski was plaintiff and Edward J. Kazubowski was defendant, it was ordered that Edward J. Kazubowski be committed to the common jail of Henry County, Illinois, there to remain charged with the direct contempt mentioned in such order for six (6) months or until released by due process of law, and that a warrant for that purpose issue.

NOW, we command you that you take the body of said Edward J. Kazubowski and closely and safely keep him in your custody in the common jail of Henry County until he shall have served six months or until released by due process of law; and you are to return this Writ forthwith to this Court with an endorsement thereon showing in what manner you shall have executed the same.

WITNESS, Dean Leander, Clerk of said Court, and the seal thereof at Cambridge, Illinois, this 29th day of June, 1971.

Dean Leander
Clerk of Circuit Court

Irene Pickens
Deputy

State of Illinois)
) SS
County of Henry)

On June 29, 1971, I took custody of Edward J. Kazubowski at his home at 133 E. Division St., Kewanee, Illinois and I am keeping him in the county jail, Cambridge, Illinois.

Lacy E. Kay · 305 P
Sheriff of Henry County
6/29

Sheriff's Fees
Service - $4.00
Mileage - 6.40
Return - 3.00
$13.40

APPENDIX N

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution

Article III, Section 2:

"* * * The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed."

Article VI, Clause 2:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Amendment 4:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Amendment 5:

". . . nor shall any person . . . be deprived of life, liberty, or property, without due process of law. . . ."

Amendment 6:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall

have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment 8:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Amendment 13:

"Section 1: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Amendment 14, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Illinois Constitution of 1870

Article II, Section 6. Searches and seizures:

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue without probable cause, supported by affidavit, particularly describing the place to be searched, and the persons or things to be seized."

Article II, Section 19:

"Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay."

Article VI, Section 5. Jurisdiction:

The Supreme Court may exercise original jurisdiction in cases relating to the revenue, mandamus, prohibition and habeas corpus, such original jurisdiction as may be necessary to the complete determination of any cause on review, and only appellate jurisdiction in all other cases.

APPENDIX O

STATUTES INVOLVED

United States Statutes

28 U.S.C. §1651.

§ 1651 Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. §2241. Power to grant writ:

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application

for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

28 U.S.C. §2243. Issuance of writ; return; hearing; decision:

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

28 U.S.C. §2251. Stay of State court proceedings:

A justice or judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment or discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding.

After the granting of such a stay, any such proceeding in any State court or by or under the authority of any State shall be void.

28 U.S.C. §2253. Appeal:

In a habeas corpus proceeding before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, unless the justice or judge who rendered the order or a circuit justice or judge issues a certificate of probable cause.

28 U.S.C. §2201. Creation of remedy:

In case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. §2202. Further relief:

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

18 U.S.C. §241. Conspiracy against rights of citizens:

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

June 25, 1948, c. 645, 62 Stat. 696; Apr. 11, 1968, Pub. L. 90-284, Title I, § 103(a), 82 Stat. 75.

18 U.S.C. §242. Deprivation of rights under color of law:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color,

or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

June 25, 1948, c. 645, 62 Stat. 696; Apr. 11, 1968, Pub. L. 90-284, Title I, § 103(b), 82 Stat. 75.

18 U.S.C. §371. Conspiracy to commit offense or to defraud United States:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1948, c. 645, 62 Stat. 701.

Illinois Revised Statutes (1969)

Chap. 38, sec. 108-3. Grounds for Search Warrant:

Upon the written complaint of any person under oath or affirmation which states facts sufficient to show probable cause and which particularly describes the place or person, or both, to be searched and the things to be seized, any judge may issue a search warrant for the seizure of the following:

(a) Any instruments, articles or things which have been used in the commission of, or which may constitute evidence of, the offense in connection with which the warrant is issued.

(b) Any person who has been kidnapped in violation of the laws of this State, or who has been kidnapped in anoother jurisdiction and is now concealed within this State or any human fetus or human corpse.

Chap. 38, sec. 108-7. Command of Search Warrant:

The warrant shall command the person directed to execute the same to search the place or person particularly described in the warrant and to seize the instruments, articles or things particularly described in the warrant.

Chap. 38, sec. 108-10. Return to Court of Things Seized:

A return of all instruments, articles or things seized shall be made without unnecessary delay before the judge issuing the warrant or before any judge named in the warrant or before any court of competent jurisdiction. An inventory of any instruments, articles or things seized shall be filed with the return and signed under oath by the officer or person executing the warrant. The judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the instruments, articles or things were taken and to the applicant for the warrant.

Chap. 38, sec. 109-1. Person Arrested:

(a) A person arrested without a warrant shall be taken without unnecessary delay before the nearest and most accessible judge in that county, and a charge shall be filed. A person arrested on a warrant shall be taken without unnecessary delay before the judge who issued the warrant or if he is absent or unable to act before the nearest or most accessible judge in the same county.

(b) The judge shall:

(1) Inform the defendant of the charge against him and shall provide him with a copy of the charge.

(2) Advise the defendant of his right to counsel and if indigent shall appoint a public defender or licensed attorney at law of this State to represent him in accordance with the provisions of Section 113-3 of this Code.

(3) Hold a preliminary hearing in those cases where the judge is without jurisdiction to try the offense; and

(4) Admit the defendant to bail in accordance with the provisions of Article 110 of this Code.

Chap. 38, sec. 109-3. Preliminary Examination:

(a) The judge shall hold the defendant to answer to the court having jurisdiction of the offense if from the evidence it appears there is probable cause to believe an offense has been committed by the defendant.

(b) If the defendant waives preliminary examination the judge shall hold him to answer and may, or on the demand of the prosecuting attorney shall, cause the witnesses for the State to be examined. After hearing the testimony if it appears that there is not probable cause to believe the defendant guilty of any offense the judge shall discharge him.

(c) During the examination of any witness or when the defendant is making a statement or testifying the judge may and on the request of the defendant or State shall exclude all other witnesses. He may also cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

(d) If the defendant is held to answer the judge may require any material witness for the State or defendant to enter into a written undertaking to appear at the trial, and may provide for the forfeiture of a sum certain in the event the witness does not appear at the trial. Any witness who refuses to execute a recognizance may be committed by the judge to the custody of the sheriff until trial or further order of the court having jurisdiction of the cause. Any witness who executes a recognizance and fails to comply with its terms shall, in addition to any forfeiture provided in the recognizance, be subject to the penalty provided in Section 32-10 of the "Criminal Code of 1961", approved July 28, 1961, as heretofore and hereafter amended, for violation of bail bond.

Chap. 38, sec. 111-3. Form of Charge:

(a) A charge shall be in writing and allege the commission of an offense by:

(1) Stating the name of the offense;

(2) Citing the statutory provision alleged to have been violated;

(3) Setting forth the nature and elements of the offense charged;

(4) Stating the time and place of the offense as definitely as can be done; and

(5) Stating the name of the accused, if known, and if not known, designate the accused by any name or description by which he can be identified with reasonable certainty.

(b) An indictment shall be signed by the foreman of the Grand Jury and an information shall be signed by the State's Attorney and sworn to by him or another. A complaint shall be sworn to and signed by the complainant.

Chap. 65, sec. 1:

Be it enacted by the People of the State of Illinois, represented in the General Assembly: That every person imprisoned or otherwise restrained of his liberty, except as herein otherwise provided, may prosecute a writ of habeas corpus in the manner provided in this act, to obtain relief from such imprisonment or restraint, if it prove to be unlawful.

Chap. 65, sec. 2:

Application for the writ shall be made to the court or judge authorized to issue the same, by petition signed by the person for whose relief it is intended, or by some person in his behalf, and verified by affidavit; provided, that such application shall be made to the Supreme Court or to a court of competent jurisdiction of the city or of the county in which the person in whose behalf the application is made, is imprisoned or restrained, or to a court of competent jurisdiction of the city from which said person was sentenced or committed or of the county from which said person was sentenced or committed.